

N.D.A.G. Letter to Jones (April 4, 1986)

April 4, 1986

Mr. Wayne P. Jones
Ransom County State's Attorney
P. O. Box 391
Lisbon, ND 58054

Dear Mr. Jones:

Thank you for your March 21, 1986, letter concerning the application of the new industry tax exemption provisions to property located in Enderlin, North Dakota, that is owned by National Sun Industries.

Your letter recites the following important set of facts:

National Sun Industries, a North Dakota Corporation applied for and was awarded the tax exemption to run until February of 1988. Thereafter, and after operating approximately one year, National Sun Industries filed for reorganization with the Federal Bankruptcy Court. When the reorganization was finished, the basic structure of the corporate ownership had changed. Initially the ownership was 50% of the shares owned by I. S. Joseph Company and 50% of the shares owned by Universal Oil Company. After the bankruptcy, 85% of the shares are owned by Norcom and 15% of the shares are owned by Universal Oil Company. National Sun Industries still remains as a North Dakota corporation as it was on the date it applied for the exemption.

You wish to know whether this reorganization has created a new project operator who must file a new application for a property tax exemption if the original exemption is to continue for its full term.

The tax exemption provisions for new industries are found at N.D.C.C. Ch. 40-57.1. N.D.C.C. § 40-57.1-06 provides, in pertinent part, as follows:

40-57.1-06. EXEMPTIONS -- TIME FOR MAKING APPLICATION. .
. .In addition, the property tax exemption provided by this chapter shall apply only to the project operator to which it is granted and shall be valid only so long as the property is used for the purposes stated in the application. If there is a change in use of the property, or if a new project operator takes possession of the property, the property tax exemption shall terminate and the project operator must file a new application wit the municipality if he wishes consideration for a tax exemption for the remainder of the exemption period provided pursuant to section 40-51.1-03.

It is the general rule that the fact that the ownership of corporate stock changes does not affect the corporation's existence or its contract rights. "[T]he stock which belongs to the stockholders is distinct from the property of the corporation, which belongs to it, and the transferee of stock acquires no title to the corporation's project." 18 C.J.S. Corporations § 441, p. 1074 (1939).

Since there has only been a transfer of National Sun Industries' stock, it is my opinion that there is not a new project operator who must file a new application for a property tax exemption pursuant to N.D.C.C. §40-57.1-06.

If you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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